

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Greg Finch	Team: Squad #7	CCRB Case #: 201801705	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 02/28/2018 10:42 PM	Location of Incident: In front of § 87(2)(b)	Precinct: 83	18 Mo. SOL 8/28/2019	EO SOL 8/28/2019	
Date/Time CV Reported Thu, 03/01/2018 5:35 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 03/01/2018 5:35 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Alimena	16308	954477	083 PCT
2. POM Carmine Demieri	08753	957532	083 PCT
3. POM Benjamin Perez	16594	944886	083 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Robert Alimena	Abuse: Police Officer Robert Alimena stopped § 87(2)(b)	§ 87(2)(b)
B.POM Carmine Demieri	Abuse: Police Officer Carmine Demieri stopped § 87(2)(b)	§ 87(2)(b)
C.POM Benjamin Perez	Abuse: Police Officer Benjamin Perez stopped § 87(2)(b)	§ 87(2)(b)
D.POM Robert Alimena	Discourtesy: Police Officer Robert Alimena spoke discourteously to § 87(2)(b)	§ 87(2)(b)
E.POM Robert Alimena	Force: Police Officer Robert Alimena used physical force against § 87(2)(b)	§ 87(2)(b)
F.POM Carmine Demieri	Force: Police Officer Carmine Demieri used physical force against § 87(2)(b)	§ 87(2)(b)
G.POM Robert Alimena	Abuse: Police Officer Robert Alimena frisked § 87(2)(b)	§ 87(2)(b)
H.POM Carmine Demieri	Abuse: Police Officer Carmine Demieri frisked § 87(2)(b)	§ 87(2)(b)
I.POM Benjamin Perez	Abuse: Police Officer Benjamin Perez frisked § 87(2)(b)	§ 87(2)(b)
J.POM Benjamin Perez	Abuse: Police Officer Benjamin Perez searched § 87(2)(b)'s backpack.	§ 87(2)(b)
K.POM Robert Alimena	Abuse: Police Officer Robert Alimena searched § 87(2)(b)	§ 87(2)(b)
L.POM Carmine Demieri	Abuse: Police Officer Carmine Demieri searched § 87(2)(b)	§ 87(2)(b)
M.POM Carmine Demieri	Discourtesy: Police Officer Carmine Demieri spoke discourteously to § 87(2)(b)	§ 87(2)(b)
N.POM Robert Alimena	Abuse: Police Officer Robert Alimena refused to provide his name and shield number to § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
O.POM Carmine Demieri	Abuse: Police Officer Carmine Demieri refused to provide his name and shield number to § 87(2)(b)	
P.POM Benjamin Perez	Abuse: Police Officer Benjamin Perez refused to provide his name and shield number to § 87(2)(b)	

Case Summary

On March 1, 2018, § 87(2)(b) filed this complaint via the CCRB's website.

On February 28, 2018, at approximately 10:42 p.m., § 87(2)(b) was standing in front of his home, located at § 87(2)(b) in Brooklyn, when he was approached by Police Officer Robert Alimena, Police Officer Carmine Demieri and Police Officer Benjamin Perez of the 83rd Precinct. PO Alimena, PO Demieri and PO Perez stopped § 87(2)(b) (**Allegations A, B and C: Abuse of Authority**, § 87(2)(g)). PO Alimena spoke discourteously to § 87(2)(b) (**Allegation D: Discourtesy**, § 87(2)(g)). PO Alimena and PO Demieri allegedly used physical force against § 87(2)(b) (**Allegations E and F: Force**, § 87(2)(g)). PO Alimena, PO Demieri and PO Perez frisked § 87(2)(b) (**Allegations G, H and I: Abuse of Authority**, § 87(2)(g)). PO Perez searched § 87(2)(b)'s backpack (**Allegation J: Abuse of Authority**, § 87(2)(g)). PO Alimena and PO Demieri allegedly searched § 87(2)(b) (**Allegations K and L: Abuse of Authority**, § 87(2)(g)). PO Demieri spoke discourteously to § 87(2)(b) (**Allegation M: Discourtesy**, § 87(2)(g)). PO Alimena, PO Demieri and PO Perez allegedly refused to provide their name and shield numbers to § 87(2)(b) (**Allegations N, O and P: Abuse of Authority**, § 87(2)(g)). No summonses or arrests were effected, and a Stop, Question and Frisk Report was generated by PO Alimena (Board Review 01).

§ 87(2)(g)

§ 87(2)(b) captured part of this incident on cell phone video. The original footage can be found in IA#12 IA#13 (Board Review 02; Board Review 03) and the summary of the footage can be found in IA#79 (Board Review 04). SnagIt copies have been placed below.

Findings and Recommendations

Allegation A — Abuse of Authority: Police Officer Robert Alimena stopped § 87(2)(b)

Allegation B — Abuse of Authority: Police Officer Carmine Demieri stopped § 87(2)(b)

Allegation C — Abuse of Authority: Police Officer Benjamin Perez stopped § 87(2)(b)

The SnagIt clip captures § 87(2)(b) videorecording himself near a mailbox before he is stopped on the sidewalk by PO Alimena, PO Demieri and PO Perez (Board Review 10).



SnagIt1Stop.mp4

In the video, the mailbox grate audibly opens and closes multiple times as § 87(2)(b) speaks for approximately 45 seconds before PO Alimena approaches and speaks to him. § 87(2)(b) does not attempt to walk away from the officers when they approach.

§ 87(2)(b) said that he placed his backpack on top of a mailbox and was videorecording himself on his cell phone when he observed an unmarked black patrol car drive past him (Board Review 05). PO Alimena, PO Demieri and PO Perez exited the car and approached § 87(2)(b) on the sidewalk. § 87(2)(b) put his backback on his right shoulder and began walking away from the mailbox. PO Alimena said to § 87(2)(b) “What do we got going on here? We just want to talk.” § 87(2)(b) asked, “What am I being stopped for? I did not commit a crime. Am I being detained? Am I free to go?” PO Alimena said, “You’re being detained for me to talk to you.”

PO Alimena said that as the officers waited at a red light, he observed § 87(2)(b) in front of a mailbox with a backpack placed on top of the mailbox and opening and closing the gate multiple times (Board Review 06). PO Alimena did not see § 87(2)(b) reach his arm into the mailbox nor insert anything into his backpack during this time. The distance between PO Alimena and § 87(2)(b) was fifteen feet upon first observation, and the corner was lit by streetlights with clear visibility. There was a condition inside of the 83rd Precinct for mailbox fishing, which has been an active condition for six months. Thirty seconds after first observing § 87(2)(b) in front of the mailbox, PO Alimena, PO Demieri and PO Perez exited the unmarked patrol car and approached § 87(2)(b) on the sidewalk. When asked if he suspected § 87(2)(b) of committing a crime at this point, specifically mailbox fishing, PO Alimena said, “I didn’t know at that point in time.” Alimena said to § 87(2)(b) “Hey, how’s it going, can I talk to you real quick.” § 87(2)(b) was immediately combative and hostile to officers. § 87(2)(b) said, “Why are you talking to me? What are you suspecting me of doing?” and refused to answer officers’ questions.

PO Demieri’s statement and PO Perez’s statement were consistent with PO Alimena’s (Board Review 07; Board Review 08). PO Demieri said that § 87(2)(b) reached his hand into the mailbox gate, and that he suspected § 87(2)(b) of mailbox fishing. PO Perez said that officers explained to § 87(2)(b) “We just want to talk to you, can you tell us what you’re doing and what you’ve got in your bookbag.”

The Stop and Frisk Report generated for this incident by PO Alimena states “Officer observed male standing on a mailbox for extended period of time with a backpack and door was opening and closing from the mailbox. Male was stuffing his backpack and arm appeared to be inside the mailbox” (Board Review 01).

Mailbox fishing, which includes attempting to steal mail from an authorized depository for mail matter, is a federal crime 18 U.S. Code § 1708 (Board Review 09). An officer may stop and detain an individual if he or she has reasonable suspicion that the individual has committed, is committing, or is about to commit a crime (People v. DeBour, 40 N.Y.2d 210; 1976) (Board Review 18).

§ 87(2)(g)

Allegation D — Discourtesy: Police Officer Robert Alimena spoke discourteously to

§ 87(2)(b)

The SnagIt clip captures PO Alimena saying to § 87(2)(b) “You need to fucking calm down and have a fucking conversation with me.”



SnagIt4AlimenaDiscourtesy.mp4

It is undisputed that PO Alimena said to § 87(2)(b) “You need to fucking calm down and have a fucking conversation with me.”

PO Alimena did not recall if he made the alleged statement to § 87(2)(b) or otherwise used profanity with him during this stop. PO Alimena identified his voice in the video footage during his interview, and could not provide a justification for using the statement when he watched the video.

Patrol Guide 203-10 prohibits officers from using discourteous or disrespectful remarks. (Board Review 27)

§ 87(2)(g)

Allegation E — Force: Police Officer Robert Alimena used physical force against § 87(2)(b)

Allegation F — Force: Police Officer Carmine Demieri used physical force against § 87(2)(b)

The SnagIt clip captures § 87(2)(b) speaking with the officers during the stop (Board Review 11).



SnagIt2Force.mp4

The video goes black during the section of the alleged force, during which time an argument can be heard between § 87(2)(b) and the officers.

§ 87(2)(b) said that PO Alimena reached for the right strap of § 87(2)(b)'s backpack and attempted to pull the bag off his shoulder, saying, “What do we have here?” § 87(2)(b) took a step away from PO Alimena and jerked his right shoulder away from PO Alimena. PO Alimena then kicked § 87(2)(b)'s right knee in an attempt to trip him, but was unsuccessful. PO Alimena and PO Demieri then grabbed § 87(2)(b)'s arms and pinned his upper body against a nearby window grate.

PO Alimena said that when the stop began, § 87(2)(b) was immediately combative, hostile to the officers, refused to answer officers' questions and refused to provide ID. § 87(2)(b) zipped up his backpack on top of the mailbox, threw the backpack on his shoulder and began to walk away from the officers. § 87(2)(b) “escalated” the stop by walking from the officers, and increased PO Alimena's suspicions that § 87(2)(b) was hiding mail that he fished out of the mailbox. PO Alimena asked § 87(2)(b) to stand up against the wall of the building, and § 87(2)(b) did so independently. PO Alimena denied that he or any other officer kicked or tripped § 87(2)(b) to bring him to the ground. PO Alimena did not recall if any officer used force against § 87(2)(b) during this incident.

PO Demieri's statement and PO Perez's statement were consistent with PO Alimena's. PO Demieri did not recall if § 87(2)(b) tried to walk away from the stop, and denied that any officer used physical force against § 87(2)(b). PO Perez did not recall if any officer physically prevented § 87(2)(b) from walking away from the stop, and denied that he or any other officer kicked or tripped § 87(2)(b).

The video provided by § 87(2)(b) cuts to black during the section of the alleged force, but appears to depict a scuffle between § 87(2)(b) and the officers before § 87(2)(b) was frisked and searched. § 87(2)(g)

§ 87(2)(g)

Allegation G — Abuse of Authority: Police Officer Robert Alimena frisked § 87(2)(b)

Allegation H — Abuse of Authority: Police Officer Carmine Demieri frisked § 87(2)(b)

Allegation I — Abuse of Authority: Police Officer Benjamin Perez frisked § 87(2)(b)

Allegation J — Abuse of Authority: Police Officer Benjamin Perez searched § 87(2)(b)
§ 87(2)(b)'s backpack.

Allegation K — Abuse of Authority: Police Officer Robert Alimena searched § 87(2)(b)

Allegation L — Abuse of Authority: Police Officer Carmine Demieri searched § 87(2)(b)

The SnagIt clip captures § 87(2)(b) being frisked on the sidewalk by PO Alimena, PO Demieri and PO Perez, PO Perez searching § 87(2)(b)'s backpack (Board Review 12).



SnagIt3FriskSearch.mp4

In the video, § 87(2)(b) can be heard loudly objecting as PO Alimena, PO Demieri and PO Perez frisk him against the building wall, saying “Am I being detained, am I free to leave?” and repeatedly asked what crime the officers suspected him of committing. PO Perez can be seen opening § 87(2)(b)'s backpack, and appears to insert his hand into § 87(2)(b)'s backpack below the frame. At different points in the video, PO Alimena, PO Demieri and PO Perez pat down § 87(2)(b)'s waistband and jacket pockets, but the officers' hands and § 87(2)(b)'s pockets are outside the frame. During the frisk, § 87(2)(b) said to the officers, “That’s bugged out, search all you want, it’s a lawsuit.” After the frisk, PO Demieri can be seen handing an ID to PO Perez. Later, § 87(2)(b) loudly says, “Stop searching me,” to PO Alimena, who responds, “I’m not searching you.”

It is undisputed that PO Alimena and PO Demieri frisked § 87(2)(b). It is undisputed that no officer suspected § 87(2)(b) of carrying a weapon.

§ 87(2)(b) said that PO Alimena told him to remove his backpack, then forcibly removed the backpack from § 87(2)(b)'s shoulder and handed it to PO Perez. PO Alimena and PO Demieri patted down all of § 87(2)(b)'s sweater and pants pockets. PO Perez searched § 87(2)(b)'s backpack by unzipping its two zippers and placing the contents of the backpack on the street. PO Alimena and PO Demieri inserted their hands into all of § 87(2)(b)'s sweater and pants pockets. PO Alimena removed § 87(2)(b)'s wallet from one of his back pants pockets and removed his ID to run a warrant check.

Regarding the frisks and searches, PO Alimena said that § 87(2)(b) told the officers, “Search whatever you want,” which PO Alimena took as permission to frisk § 87(2)(b) and search his backpack. PO Alimena frisked § 87(2)(b) by patting down the outside of his pockets

for “basic safety” and to make sure § 87(2)(b) didn’t have any weapons. The frisk of § 87(2)(b) returned negative results. PO Alimena did not recall if PO Demieri or PO Perez frisked § 87(2)(b). As PO Perez searched § 87(2)(b)’s backpack, § 87(2)(b) rescinded his permission by saying, “Wait, wait, hold on, no,” after which the officers stopped frisking § 87(2)(b) and PO Perez stopped searching his backpack. PO Alimena denied searching § 87(2)(b). PO Alimena said that PO Perez removed the backpack from § 87(2)(b)’s shoulder and searched the backpack on the sidewalk, which was partially opened, but PO Perez did not remove any contents from the backpack. PO Alimena did not recall if PO Perez reached into the backpack during the search. PO Alimena did not recall if PO Demieri searched § 87(2)(b)’s backpack. § 87(2)(b) refused to provide his ID, and although PO Alimena did not recall how the officers eventually obtained § 87(2)(b)’s ID, PO Alimena returned the ID to § 87(2)(b) at the conclusion of the stop.

Regarding the justification for the frisks and searches, when asked if he suspected § 87(2)(b) of having a weapon, PO Alimena said, “It’s very broad, we didn’t know.” When asked what the goal of the frisks and backpack search was, PO Alimena said, “Well, to be honest with you, at that point it could have been a weapon, it could have been almost anything, it could have been mail, it could have been your mail, I have no idea, it could have been a weapon, a knife, I’ve dealt with many situations where guns have been in backpacks.” PO Alimena described what contributed to his suspicion that § 87(2)(b) had a weapon as follows: “His movements, the way he bladed his body, he grabbed his bag real quick, he had a jacket on, it was February and cold out, we didn’t know if possibly something was underneath it, the way he turned and started walking away really fast.” PO Alimena also cited his experience with previous stops, and said that no further factors contributed to his suspicion that § 87(2)(b) had a weapon.

PO Demieri’s statement and PO Perez’s statement were largely consistent with PO Alimena’s. PO Demieri did not recall if § 87(2)(b) attempted to walk away from the stop. PO Demieri did not recall if he or PO Perez frisked or searched § 87(2)(b) or his backpack. PO Demieri obtained § 87(2)(b)’s ID and ran a warrant check with it, but did not recall how he obtained it from § 87(2)(b). PO Demieri said that § 87(2)(b) was frisked by an officer, though he could not recall which. PO Demieri said, when asked if he suspected § 87(2)(b) of having a weapon, that at the moment of the frisk, “At this point, we don’t know what § 87(2)(b) has.” PO Perez denied frisking § 87(2)(b) or searching his backpack, but said that an officer did search § 87(2)(b)’s backpack, though he could not recall which. PO Perez described § 87(2)(b)’s demeanor as “agitated” and “very defensive.”

PO Alimena’s Stop and Frisk Report says that § 87(2)(b) was not frisked or searched, which PO Alimena was an error when he generated the report as he did frisk § 87(2)(b) and PO Perez did search § 87(2)(b)’s backpack (Board Review 01).

A frisk requires reasonable suspicion that a person is armed. People v. De Bour, 40 N.Y.2d 210 (1976) (Board Review 18). An officer is permitted to search a person when a limited frisk for weapons reveals an object which feels like a weapon or when an object, such as a knife, becomes plainly visible to an officer during the issuance of a summons. People v. § 87(2)(b), 18 Misc.3d 1124A (Sup. Ct. Bronx Cr. 2008) (Board Review 26). According to People v. Caldwell, 221 A.D.2d 972, an officer is permitted to search an individual’s property if they have consent that is freely and voluntarily provided (Board Review 25). Consent is voluntary when it is “a true act of the will, an unequivocal product of an essentially free and unconstrained choice.” People v. Gonzalez, 39 N.Y.2d 122 (1976) (Board Review 21).

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation M — Discourtesy: Police Officer Carmine Demieri spoke discourteously to

§ 87(2)(b)

The SnagIt clip captures PO Demieri saying to § 87(2)(b) “Bro, you put your hand in a fucking mailbox.”



SnagIt5DemieriDiscourtesy.mp4

It is undisputed that PO Demieri said to § 87(2)(b) “Bro, you put your hand in a fucking mailbox.” PO Demieri did not recall if he made the alleged statement to § 87(2)(b) or

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otherwise used profanity with him during this stop. PO Demieri identified his voice in the video footage during his interview, and could not provide a justification for using the statement when he watched the video.

Patrol Guide 203-10 prohibits officers from using discourteous or disrespectful remarks. (Board Review 27)

§ 87(2)(g)

Allegation N — Abuse of Authority: Police Officer Robert Alimena refused to provide his name and shield number to § 87(2)(b)

Allegation O — Abuse of Authority: Police Officer Carmine Demieri refused to provide his name and shield number to § 87(2)(b)

Allegation P — Abuse of Authority: Police Officer Benjamin Perez refused to provide his name and shield number to § 87(2)(b)

The original footage can be found in IA#12 and IA#13 (Board Review 02; Board Review 03) and the summary of the footage can be found in IA#79 (Board Review 04). At no point during the incident does § 87(2)(b) request any officer's name or shield number.

§ 87(2)(b) said that he asked all three officers for their information by saying, "I want all your badge numbers," and that no officer acknowledged or responded to § 87(2)(b)'s request.

PO Alimena, PO Demieri and PO Perez all denied that § 87(2)(b) requested any officers' name or shield number during this incident. § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been a party to two CCRB complaints and has been named as a victim in four allegations:
 - § 87(2)(b)
- PO Alimena has been a member-of-service for four years and this is the first CCRB complaint to which he has been a subject.
- PO Demieri has been a member-of-service for four years and this is the first CCRB complaint to which he has been a subject.
- PO Perez has been a member-of-service for 11 years and has been a subject in five CCRB complaints and nine allegations, of which two were substantiated:
 - Case #201203165 involved substantiated allegations of frisk and refusal to provide name and shield number. The Board recommended Charges and the NYPD imposed formalized training and instruction.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.

- As of September 17, 2018, there has been no Notice of Claim submitted to the NYC Comptroller's Office for this incident (Board Review 16).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date